**IN THE UNITED STATES DISTRICT
COURT FOR THE EASTERN DISTRICT
OF VIRGINIA NORFOLK DIVISION**

Latasha Holloway, *et al*.,	
Plaintiffs,	
	Civil Action No. 2:18-cv-0069
v.	
City of Virginia Beach, *et al*.,	
Defendants	

**DEFENDANTS' MOTION TO EXCLUDE PLAINTIFFS' SUPPLEMENTAL
EXPER REPORTS AND OPINIONS**

PLAINTIFFS' EXHIBIT 2
Supplemental Expert Report of
Douglas M. Spencer

March 16, 2020

Supplemental Expert Report

Holloway, et al. v. City of Virginia Beach, et al., Civil Action No. 2:18-cv-0069

Douglas M. Spencer
Professor of Law & Public Policy
University of Connecticut

Visiting Professor of Law
Yale Law School

SUMMARY

I provide this supplemental expert report to update my earlier reports in this litigation, and to supplement the answers to certain questions asked at my deposition on October 1, 2019.

As an update to my earlier reports, I analyzed the performance of three modified illustrative plans for Virginia Beach City Council elections produced by Plaintiffs' expert Dr. Anthony Fairfax in his supplemental expert report. Given that these modified illustrative plans were disclosed in Dr. Fairfax's supplemental report (contemporaneous with this report), they were not available when I wrote my earlier reports. I find that the Modified Illustrative Plan, the Modified Alternative Plan 1 and the Modified Alternative Plan 2 "perform," meaning that minority voters would be able to elect their candidates of choice. In other words, minority candidates of choice are usually *not* likely to be defeated due to white bloc voting in each set of majority-minority districts contained in the plans.

As a supplement to my deposition testimony, I also confirm certain findings of my original report by providing additional supporting information which I reserved my right to provide during the deposition. See Spencer Dep. at 95:22-96:21. Specifically, I have confirmed that there is *not* statistically significant evidence that minority voters preferred George Furman over Louis Jones in the 2010 election. This finding supports the opinions I have expressed in my earlier reports regarding which candidates were minority candidates of choice.

ANALYSIS OF MODIFIED PLANS

In this section I analyze the potential cohesion in, and ameliorative effect of, three sets of possible majority-minority districts in Virginia Beach. This analysis supplements the performance analysis of Illustrative Districts that I provided in my original and rebuttal reports. A map of the Modified Illustrative Plan, Modified Alternative Plan 1, and Modified Illustrative Plan 2 are presented on the next page. Each plan has ten districts, marked by thick dark gray lines, overlaid on a map of current voting precincts. The two majority-minority districts in each modified illustrative plan are shaded green and orange.

On pp. 3-4 below I analyze the expected election totals in illustrative majority-minority districts for all candidates in races that featured a minority candidate, excluding George Furman.[1] I estimate the predicted vote totals by aggregating the vote totals in the precincts within each district. There is evidence that the majority-minority districts in the Modified Illustrative Plan, Modified Alternative Plan 1, and Modified Alternative Plan 2 perform, meaning most minority candidates of choice that lost their election under the current at-large system would have won had they run in these alternative districts.

---

[1] As I explain in my original expert report, rebuttal report, and deposition (see Spencer Dep. at 85-87) I exclude George Furman from my analysis because in three races against seven different candidates, Mr. Furman always came in last and never earned the support of minority voters. Elections featuring Mr. Furman thus do not provide a setting that is probative of the preferences of minority voters in Virginia Beach.

Finally, the minority candidate(s) of choice for each election are shaded. These candidates of choice represent individuals who received the strongest support among all minority voters, which I estimate in my original expert report and rebuttal report.
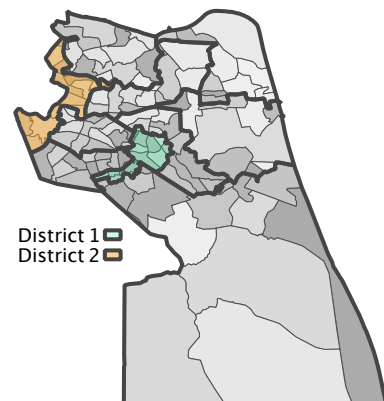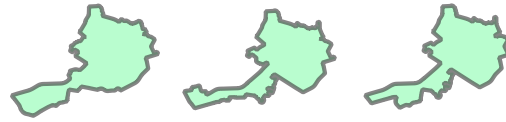

Modified Illustrative Plan

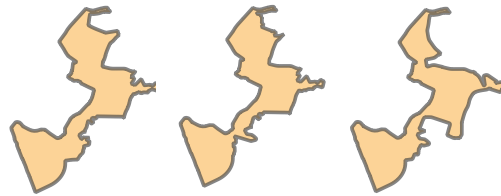District 1
District 2

Modified Alternative Plan 1
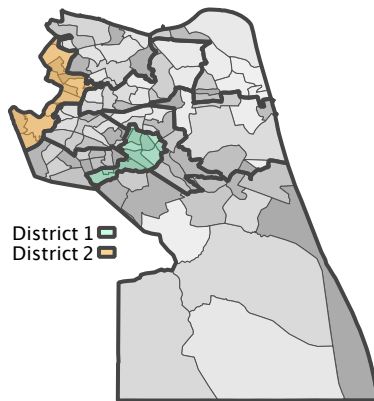
District 1
District 2
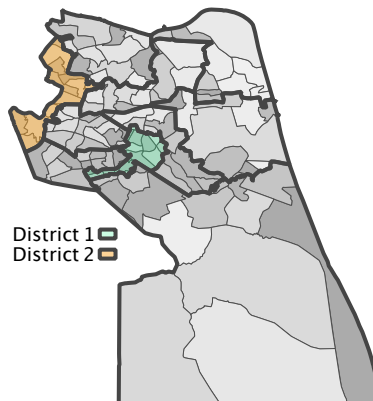
Modified Alternative Plan 2

District 1
District 2

DISTRICT 1

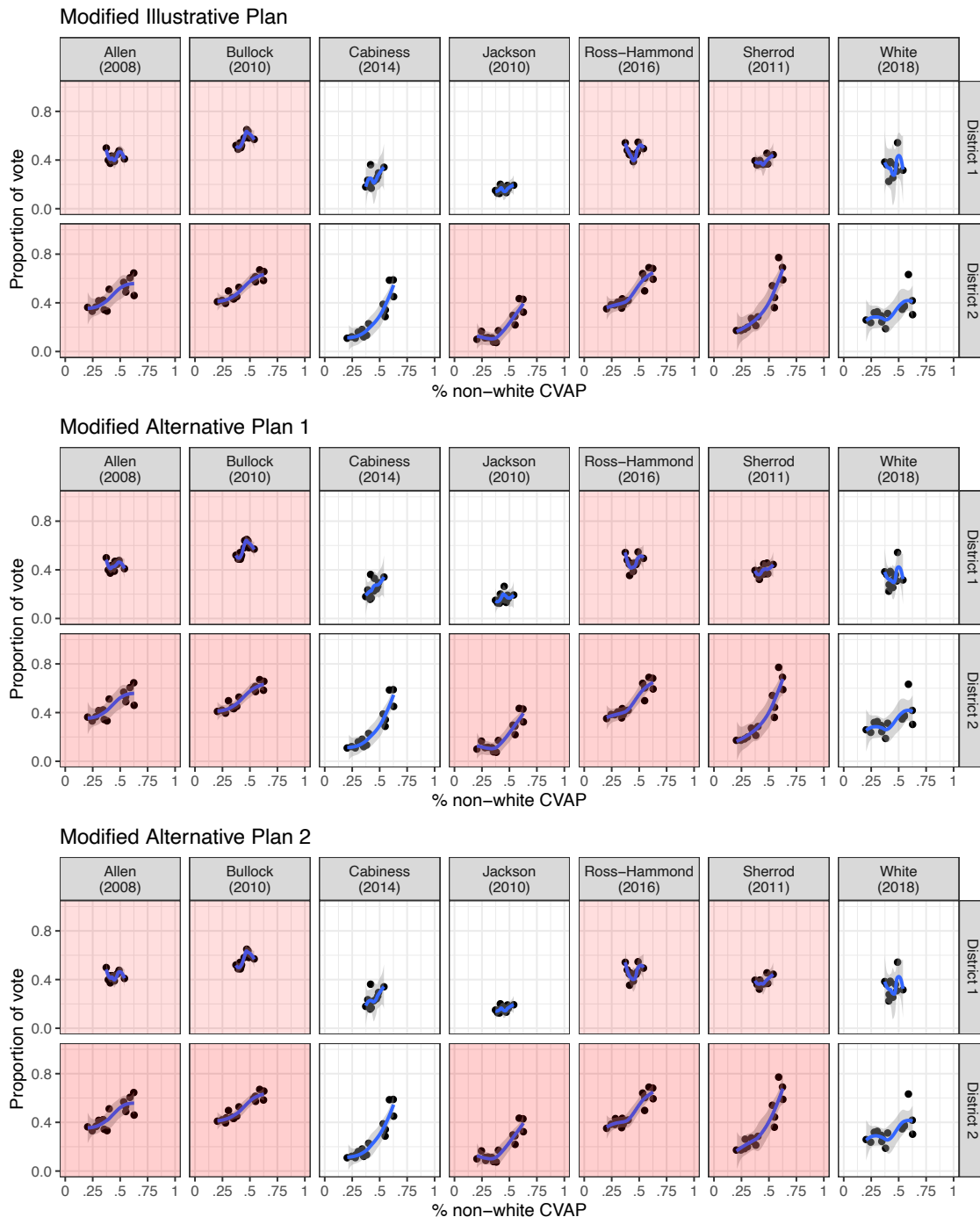|		At-Large	Modified Illustrative Plan	Modified Alternative Plan 1	Modified Alternative Plan 2
2018 AL	Rouse*	54.5	61.1	60.6	61.1
	Moss	45.3	33.5	32.7	33.1
	Oliver	45.2	40.6	39.6	39.9
	White	27.4	35.0	35.8	35.0
	Bright*	17.7	20.5	21.3	21.1
	Hubbard	10.1	10.2	10.0	9.9
2016 KE	Abbott	59.4	54.1	53.3	53.2
	Ross-Hammond*	40.6	45.9	46.7	46.8
2014 RH	Kane	48.3	41.8	40.4	40.5
	Johnston	17.5	14.8	14.3	14.4
	Browder	17.3	18.5	18.2	18.4
	Cabiness*	16.8	25.0	27.1	26.7
2011 AL	Moss	37.0	29.4	28.5	28.8
	Free	33.2	27.9	27.7	27.8
	Sherrod*	25.9	39.1	40.1	39.7
2010 AL	Bellitto	49.4	50.0	49.2	49.6
	DeSteph	44.8	41.6	40.6	41.0
	Moss	30.1	24.1	23.0	23.2
	Erb	22.5	18.0	17.8	18.0
	Redmond	21.4	15.6	15.6	15.4
	Jackson*	20.3	33.5	34.8	33.8
	Cabiness*	11.3	17.4	19.0	19.0
2010 PA	Henley	54.4	42.1	41.8	42.1
	Bullock	45.6	57.9	58.2	57.9
2008 AL	Wilson	44.1	34.5	34.0	34.2
	Allen	34.6	43.2	43.7	43.5

Notes: Actual election returns are reported as "At-large" elections.

Shaded rows indicate minority candidates of choice identified in my original and rebuttal reports.

* indicates minority candidate.

DISTRICT 2

		At-Large	Modified Illustrative Plan	Modified Alternative Plan 1	Modified Alternative Plan 2
2018 AL	Rouse*	54.5	60.1	60.3	60.1
	Moss	45.3	33.2	33.1	33.9
	Oliver	45.2	44.6	43.9	43.7
	White	27.4	32.6	33.0	32.5
	Bright*	17.7	20.0	20.2	20.2
	Hubbard	10.1	9.5	9.6	9.6
2016 KE	Abbott	59.4	47.3	47.1	48.3
	Ross-Hammond*	40.6	52.7	52.9	51.7
2014 RH	Kane	48.3	36.3	36.1	36.9
	Johnston	17.5	15.5	15.4	15.5
	Browder	17.3	17.8	17.8	18.0
	Cabiness*	16.8	30.4	30.8	29.5
2011 AL	Moss	37.0	33.3	33.1	34.0
	Free	33.2	24.1	23.9	24.5
	Sherrod*	25.9	38.9	39.3	37.6
2010 AL	Bellitto	49.4	39.9	39.7	40.0
	DeSteph	44.8	34.0	33.8	34.5
	Moss	30.1	27.2	26.9	27.5
	Erb	22.5	19.6	19.5	20.6
	Redmond	21.4	14.2	14.1	14.6
	Jackson*	20.3	42.5	43.1	41.7
	Cabiness*	11.3	22.6	22.9	21.2
2010 PA	Henley	54.4	46.6	46.4	47.5
	Bullock	45.6	53.4	53.6	52.5
2008 AL	Wilson	44.1	32.9	32.7	33.4
	Allen	34.6	47.5	47.7	46.7

Notes: Actual election returns are reported as "At-large" elections.

Shaded rows indicate minority candidates of choice identified in my original and rebuttal reports.

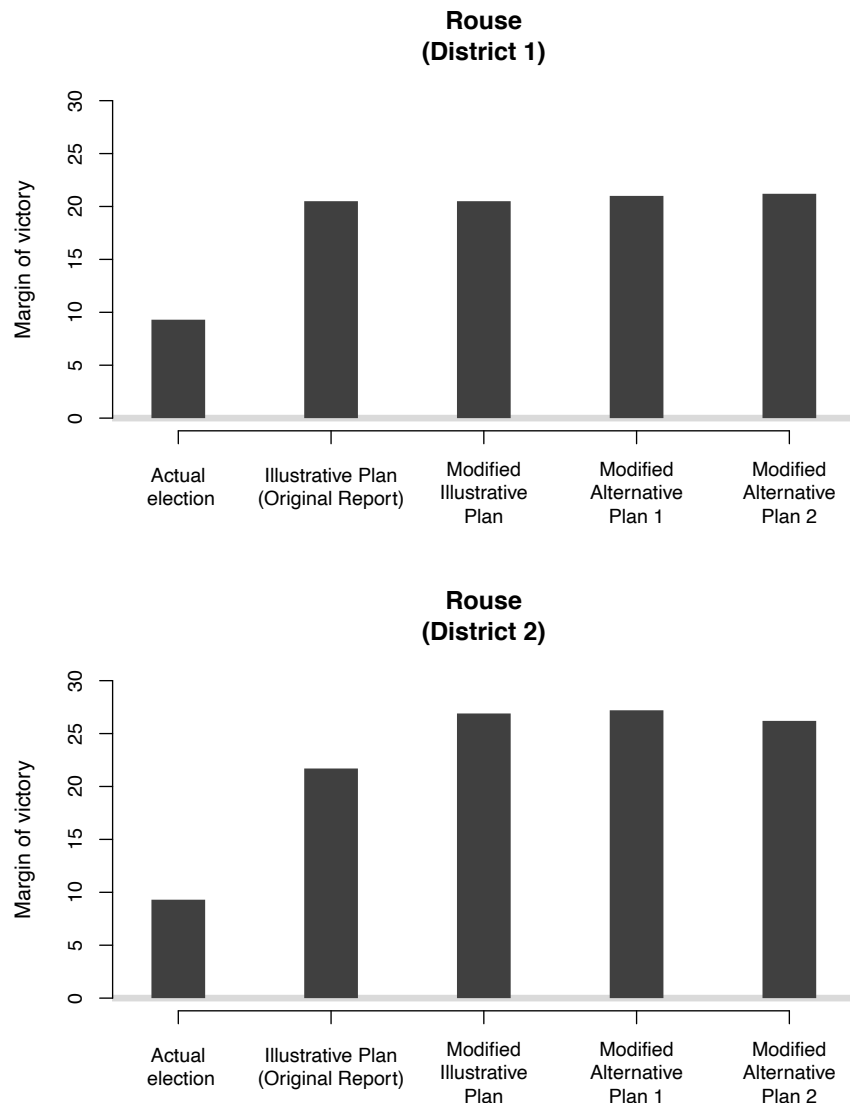* indicates minority candidate.

FINDINGS

In the panel of figures below, I plot voter support for each of the minority candidates of choice that lost between 2008-2018 against the minority CVAP based on the 2014-2018 American Community Survey (ACS). Because there are so few precincts in these districts, I use a locally weighted smoother "loess" line that is flexible and represents how the data are actually structured. The gray regions are 95% confidence intervals. The plots that are shaded in red signal that the candidate would have won an election in these new districts based on the same voting patterns of their original elections.

Modified Illustrative Plan

Modified Alternative Plan 1

Modified Alternative Plan 2

To compare the performance of the majority-minority districts in each of the Illustrative Plan (that I evaluated in my original and rebuttal reports), the Modified Illustrative Plan, and the Modified Alternative Plans 1 and 2, I plot the margin of victory/defeat for each of the candidates of choice identified in my prior reports. With one exception (Bellitto in 2010), every minority candidate of choice performed better under all of the illustrative plans than under the at-large system of their original election, meaning the candidates would either increase their margin of victory, shrink their margin of defeat, or flip the result of their election from defeat to victory.

2018 At-Large Election
Note that two candidates were elected in this race. Under the current at-large system, Aaron Rouse earned the most votes out of six candidates and won the race by 9%. Under the Illustrative Plan, Modified Illustrative Plan, Modified Alternative Plans 1 and 2, Rouse's margin of victory increased to 21% in District 1 and as much as 27% in District 2.

Rouse
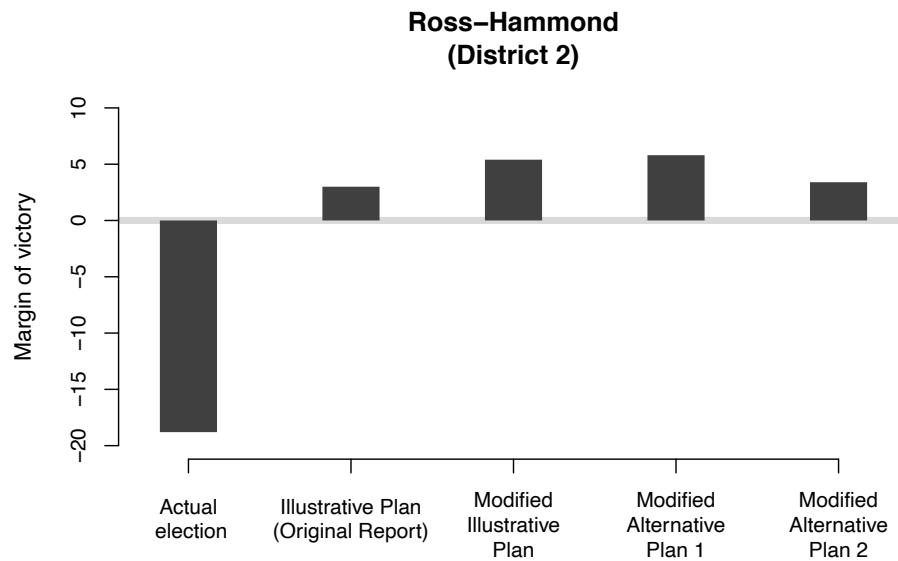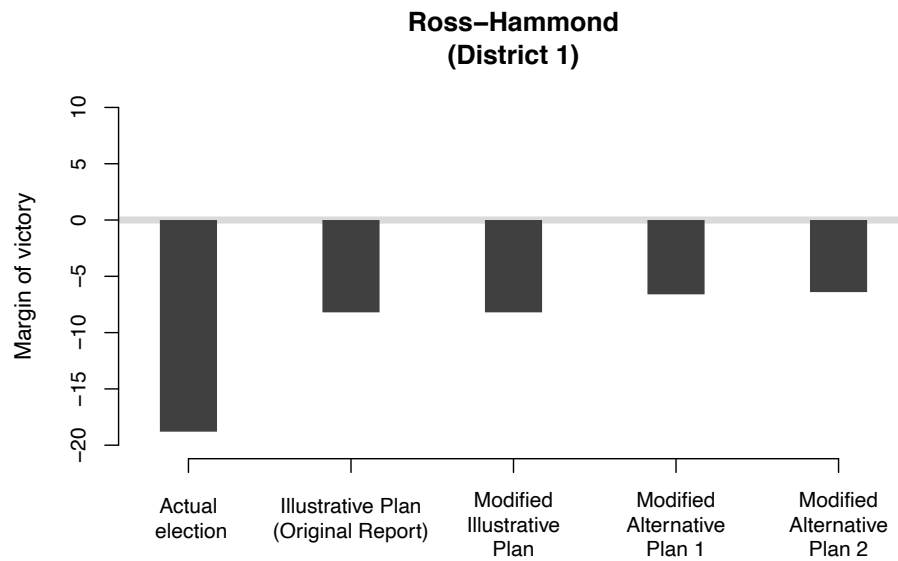**(District 1)**

Rouse
(District 2)

Under the current at-large system, the second minority candidate of choice, Allison White, came in fourth out of six candidates and lost by 18%. Under the Modified Illustrative Plan and the Modified Alternative Plans 1 and 2, White's loss margin shrunk to 4–5 percent in District 1 and 10–12 percent in District 2.

**White
(District 1)**

**White
(District 2)**
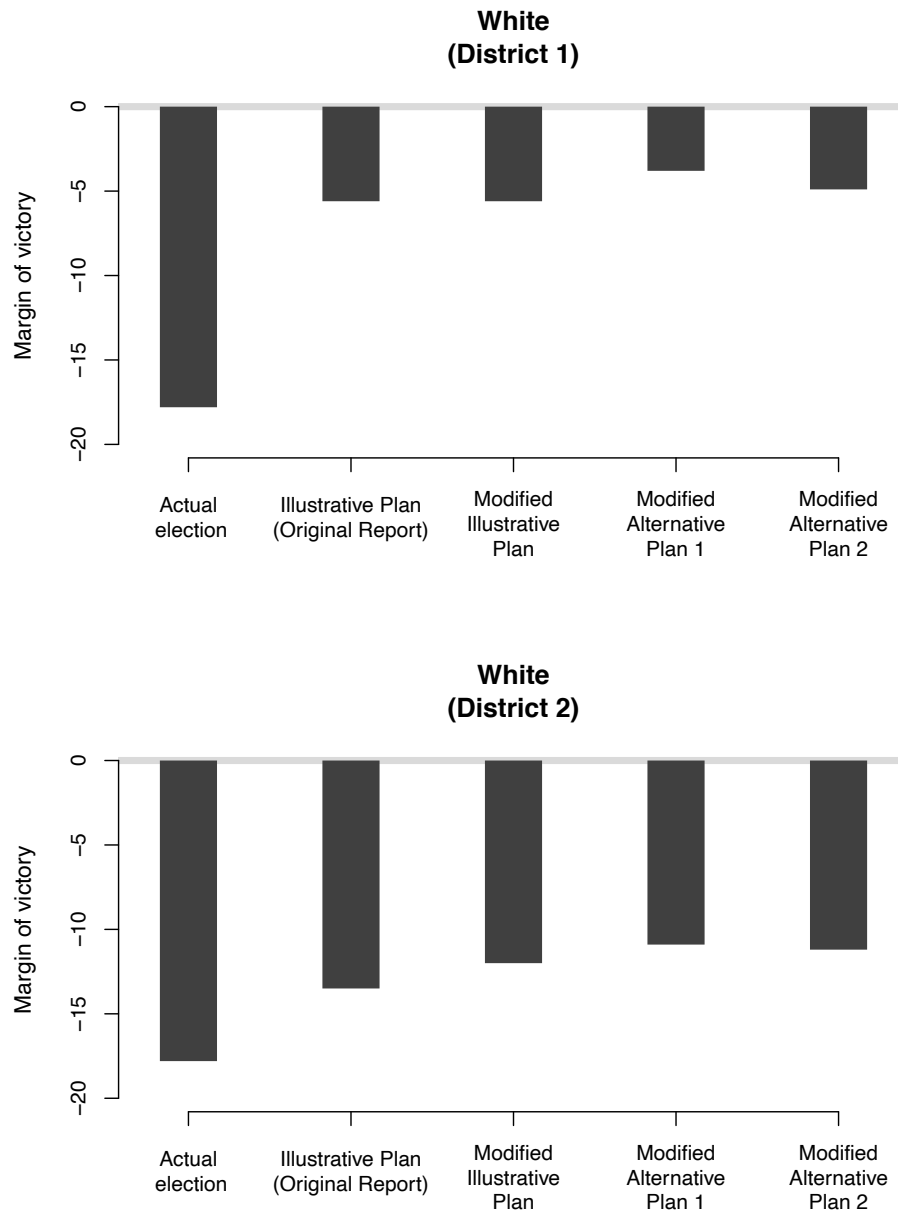
2016 Kempsville District Election

Under the current at-large system, Amelia Ross-Hammond (the minority candidate of choice) was defeated by Jessica Abbott. Under the Modified Illustrative Plan and the Modified Alternative Plans 1 and 2, Abbott would still have defeated Ross-Hammond in District 1, but **Ross-Hammond would have won election in District 2**.

**Ross–Hammond
(District 1)**

**Ross–Hammond
(District 2)**

2014 Rose Hall District Election
Under the current at-large system, minority candidate of choice James Cabiness lost by 31.5 percent, earning fewer votes than three other candidates. Under the Modified Illustrative Plan and the Modified Alternative Plans 1 and 2, Cabiness would have come in second (of four candidates) and would lose by 13–17 percent in District 1 and by just 3–7 percent in District 2.

**Cabiness
(District 1)**

**Cabiness
(District 2)**
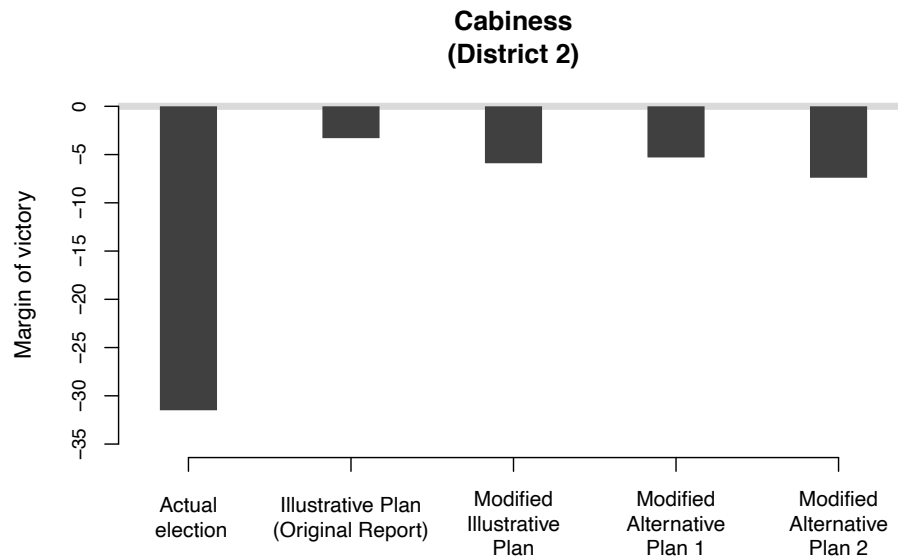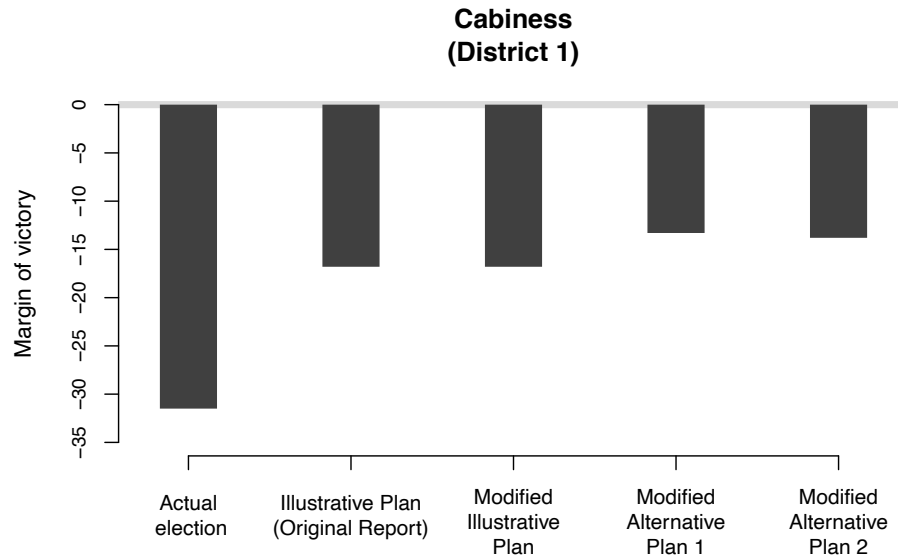
2011 At-Large (Special Election)

Under the current at-large system, minority candidate of choice Prescott Sherrod lost by 11 percent and was defeated by two candidates. However, under the Modified Illustrative Plan and the Modified Alternative Plans 1 and 2, **Sherrod would have won his election in both District 1 and District 2**.

**Sherrod
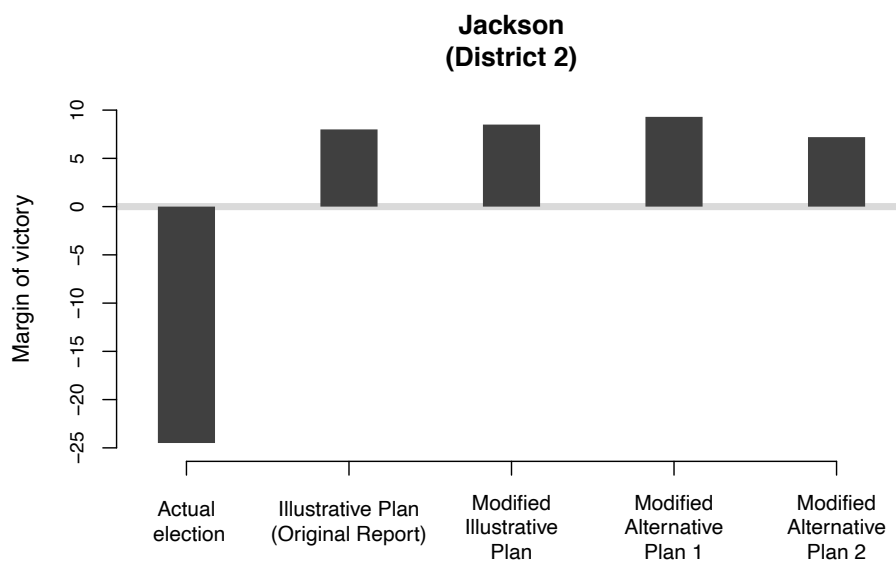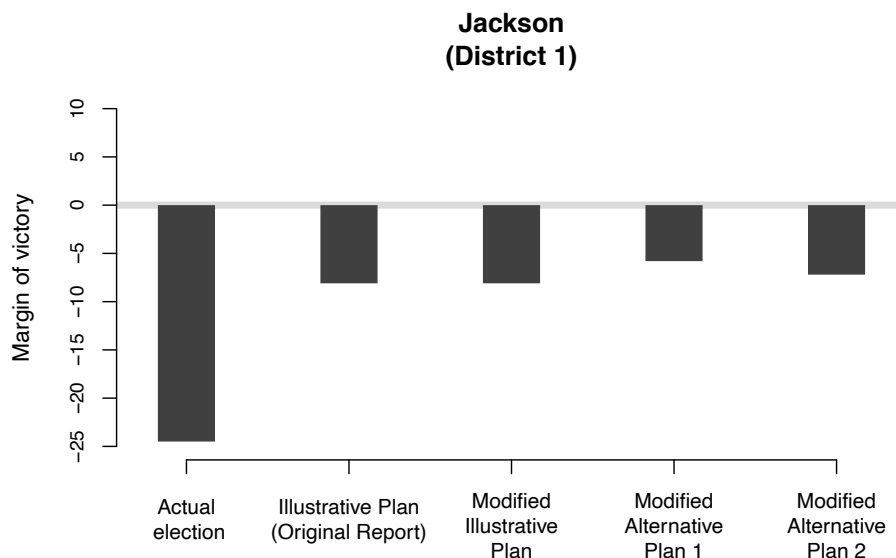(District 1)**

**Sherrod
(District 2)**
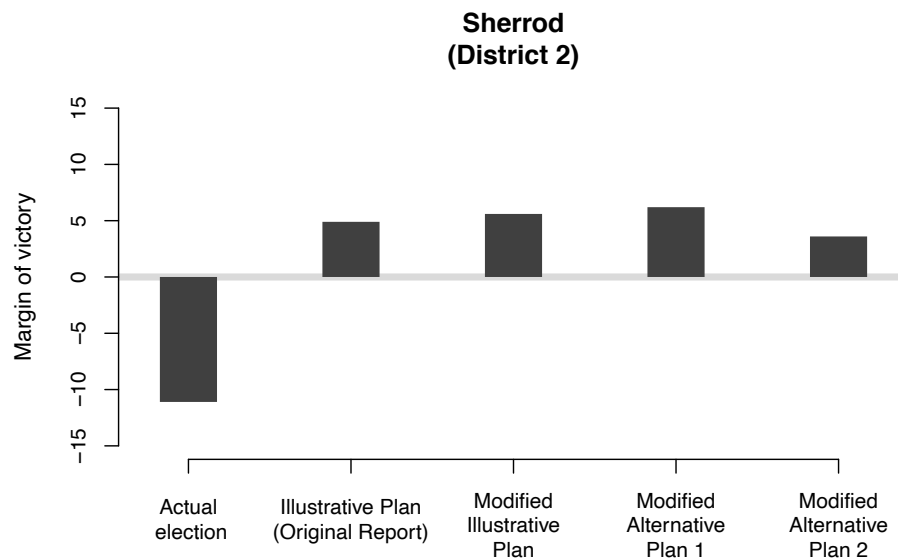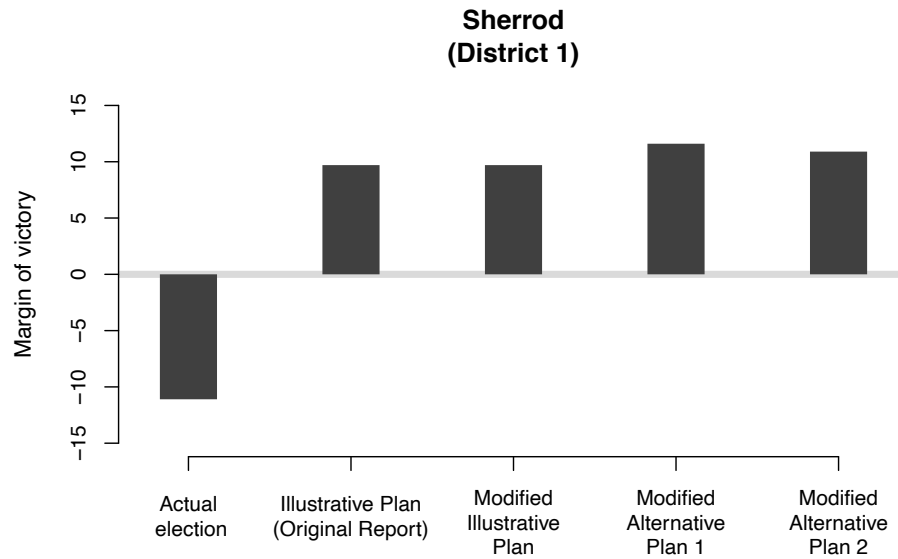
2010 At-Large Election
Note: two candidates were elected in this race. Under the current at-large system, the first minority candidate of choice was Rita Bellitto, a white female, who won the most votes of seven candidates and was elected. Under the Modified Illustrative Plan and the Modified Alternative Plans 1 and 2, **Bellitto would still win a seat in Districts 1 and 2**.

**Bellitto
(District 1)**

**Bellitto
(District 2)**
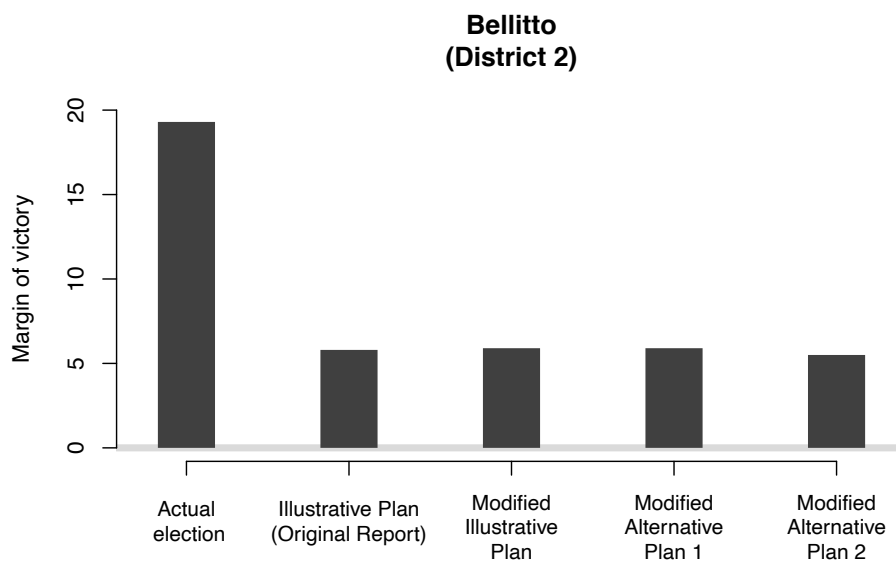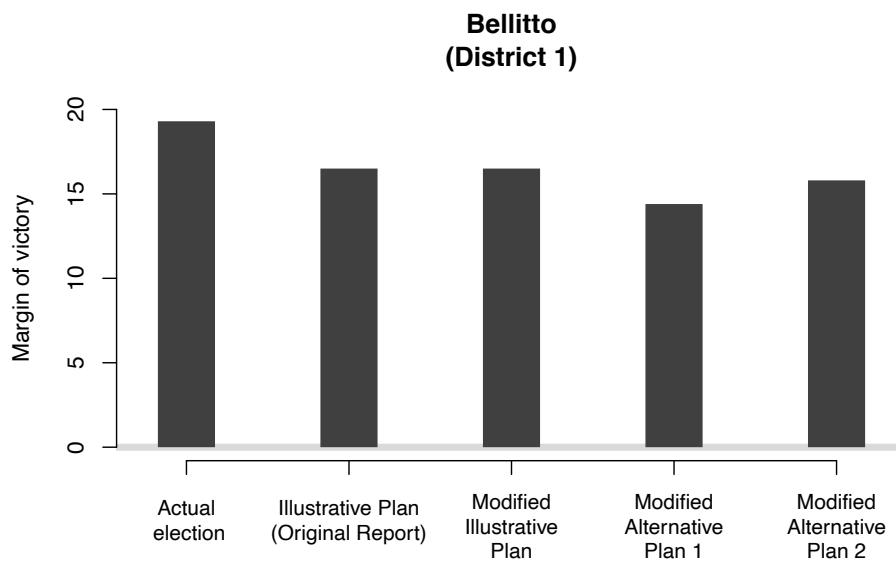
The second minority candidate of choice was Andrew Jackson, a black male, who came in 6th of seven candidates under the current at-large system. However, under the Modified Illustrative Plan and the Modified Alternative Plans 1 and 2, **Jackson would have won the most votes in District 2** (even more than Bellitto) and come in third in District 1, losing by 6–8 percent.

**Jackson
(District 1)**

**Jackson
(District 2)**

2010 Princess Anne District Election

Under the current at-large system, Barbara Henley defeated Tanya Bullock, who was the minority candidate of choice. However, under the Modified Illustrative Plan and the Modified Alternative Plans 1 and 2, **Bullock would have won her election by 16% in District 1 and by 5–7% in District 2.**

**Bullock
(District 1)**

**Bullock
(District 2)**
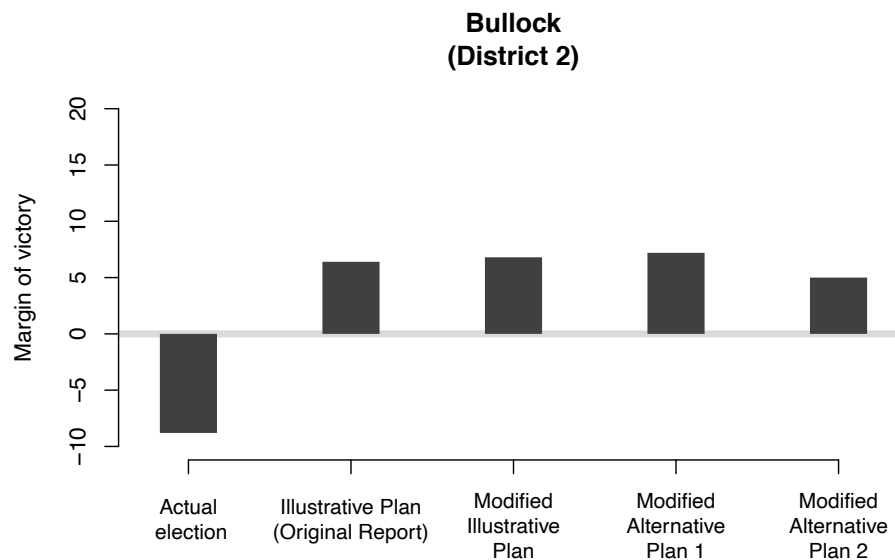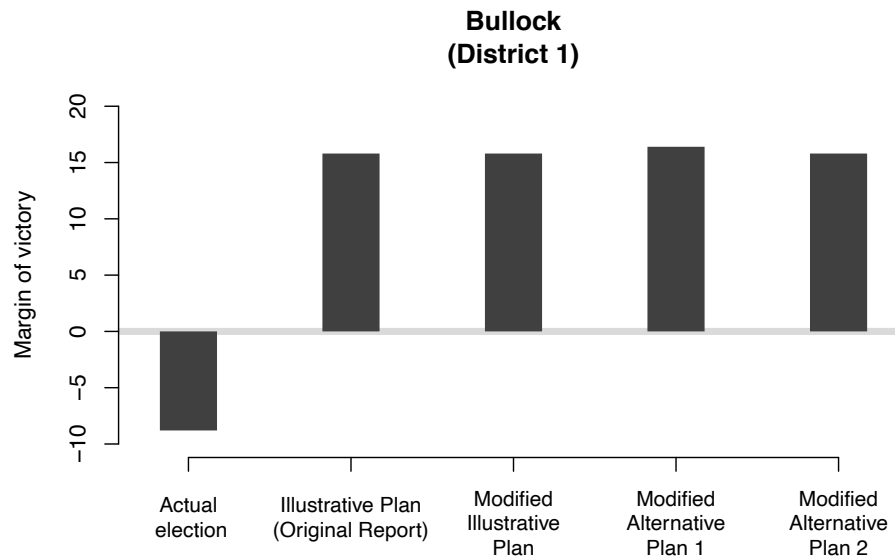
2008 At-Large Election

Under the current at-large system, the minority candidate of choice Georgia Allen was defeated by Wilson. However, under the Modified Illustrative Plan, and the Modified Alternative Plans 1 and 2, **Allen would have won her election by 9–10% in District 1 and 13–15% in District 2.**

**Allen
(District 1)**

**Allen
(District 2)**
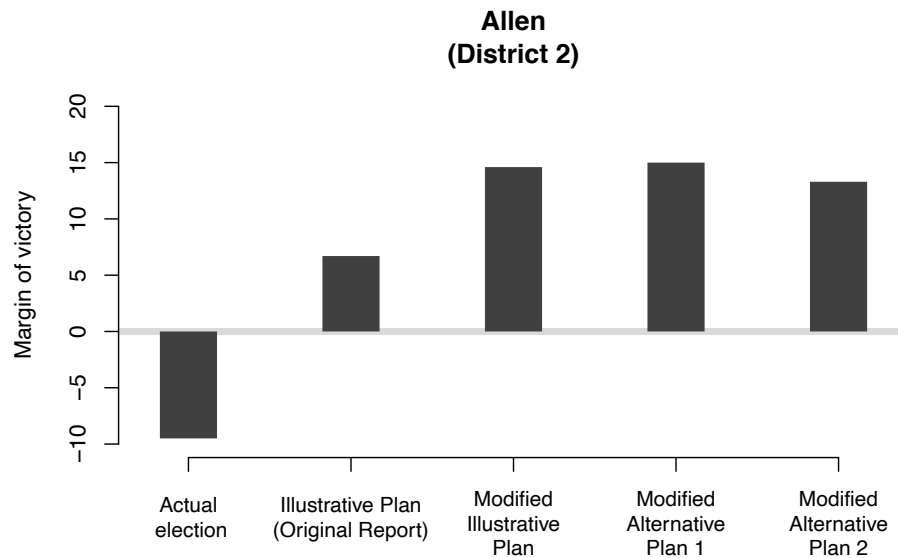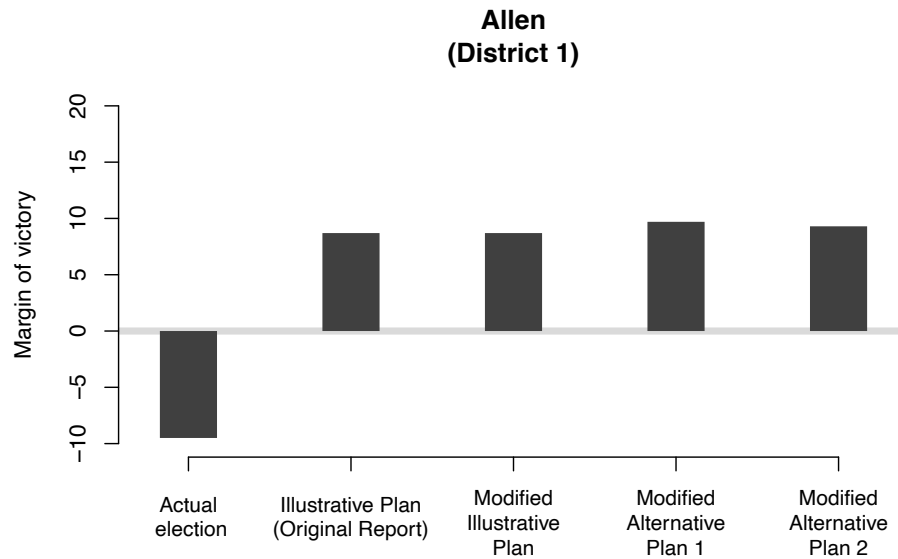
DEPOSITION FOLLOW-UP

With regard to the 2010 race between Louis Jones and George Furman, I stated during my deposition that I reserved the right to confirm whether there was a statistically significant difference between the estimated support of minority voters before being able to give a final answer to a question I was asked.

---

p. 96 lines 6-21:

Q: If that race was deemed probative, you would agree that Mr. Jones was the minority candidate of choice in your original report?

A: I have checked that box, and I – but **I would reserve the right to confirm that**. If you'll note that these estimates don't have asterisks next to them, which is my designation that there's a statistically significant difference between vote totals, and **I'd want to confirm that** they're actually different.

Q: And if they're different, that might suggest that Furman was actually the minority candidate of choice in that race?

A: No. If they were different, it would suggest Furman definitely wasn't the candidate of choice.

I have confirmed that the estimated support among minority voters for Jones and Furman in 2010 is not statistically significantly different. According to King's Ecological Inference (EI), support for Mr. Jones was $56\% \pm 14\%$ while support for Mr. Furman was $44\% \pm 16\%$. All three methods of evaluation, including homogeneous precinct analysis, ecological regression, and King's EI, show that minority support for Jones was higher than for Furman, although the differences are not statistically significantly different. Thus, while I cannot say with statistical certainty that minority support for Jones is higher than for Furman, the statistical trends suggest that minority candidates preferred Jones over Furman.

I, Douglas M. Spencer, am over the age of 18 and fully competent to make this declaration. I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

Date: March 16, 2020

Douglas M. Spencer, Ph.D
Professor of Law & Public Policy
University of Connecticut
Visiting Professor of Law
Yale Law School